BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BRYAN GROTH	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,013,431
K. L. JOHNSON TRUCKING, INC., and UNITED AGRI PRODUCTS-PUEBLO	)	
Respondents	)	
AND	)	
	)	
CONTINENTAL WESTERN INSURANCE COMPANY and OLD REPUBLIC INSURANCE COMPANY	)	
Insurance Carriers	)	

ORDER

Respondent United Agri Products-Pueblo (Pueblo Chemical & Supply) and its insurance carrier Old Republic Insurance Company appeal the April 26, 2004 preliminary hearing Order of Administrative Law Judge Pamela J. Fuller. Claimant was awarded benefits in the form of medical treatment.

ISSUES

Did claimant suffer personal injury by accident arising out of and in the course of his employment with United Agri Products-Pueblo?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge (ALJ) should be affirmed.

Claimant originally suffered accidental injury on September 24, 1997, when he fell from a truck, breaking his left lower leg in several places. Claimant underwent surgery, with plates and screws being inserted to help the ankle and leg bones heal. In December 1997, claimant suffered a minor aggravation when one of the screws broke. Claimant discussed possible surgery with Michael J. Baughman, M.D., his treating physician, but

it was ultimately determined that the surgery was unnecessary. Claimant underwent a period of conservative treatment, and his leg began to improve. Claimant discussed, on several occasions, the fact that the leg would occasionally bother him. The problems with the leg progressed to the point where, on October 22, 1999, claimant was scheduled for surgery with Dr. Baughman. However, the surgery was canceled.

Claimant returned to Dr. Baughman for treatment on September 16, 2003, after a three-year absence. The history provided to Dr. Baughman was that claimant had reinjured his leg on September 12, 2003. Dr. Baughman indicated that the nonunion was a preexisting condition, but also indicated that claimant had recently aggravated the condition. In his office note of September 16, 2003, Dr. Baughman states that claimant "had a reinjury to his leg." In his September 25, 2003 letter to Chad Turner of Sedgwick CMS,[1] Dr. Baughman states that claimant has a nonunion or a malunion of his tibia from a previous fracture, with a failure of fixation. "His recent aggravation of this condition from his 16 September 2003 [*sic*] is a continuation of his original injury." Dr. Baughman appears to say that claimant has an ongoing problem from the original 1997 injury, but at the same time has experienced a new aggravation.

The ALJ apparently determined that the aggravation was the more serious condition and that, without the aggravation, claimant would not have needed the surgery that is currently recommended. The Board has traditionally held that the date of accident and coverage disputes between insurance carriers considering which is to pay the cost of preliminary benefits are not jurisdictional.[2] However, an issue concerning which of two respondents is liable for benefits is jurisdictional.[3]

In this instance, there is not only the dispute between the insurance companies, but also an ongoing dispute between respondents K. L. Johnson Trucking, Inc., and United Agri Products-Pueblo. Claimant worked for both companies and, depending on which company he was working for, would get paid by each at various times. The Board, therefore, finds, in this instance, the dispute centers around claimant's injury and which of two respondents is liable and, therefore, is a jurisdictional dispute under K.S.A. 44-534a and K.S.A. 2003 Supp. 44-551.

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[1] Sedgwick CMS is apparently the third party administrator for Old Republic Insurance Company.

[2] *Ireland v. Ireland Court Reporting*, Nos. 176,441 and 234,974, 1999 WL 123220 (Kan. WCAB Feb. 22, 1999).

[3] *Goitia v. Southwest Developmental Services, Inc., and Bethphage/Advent Services, Inc.*, Nos. 233,983 and 245,196, 2000 WL 137183 (Kan WCAB Jan. 6, 2000).

Every natural consequence of a compensable injury is also compensable, even a new and distinct injury, if it is a direct and natural result of the original compensable injury.[4] However, a subsequent reinjury of a compensable injury is not compensable if it results from a new and separate accident.[5] In this instance, the subsequent reinjury occurred while claimant was employed by a separate respondent, who is a party to this litigation. The Board finds that claimant did suffer a new and separate accident on September 12, 2003, while employed with United Agri Products-Pueblo and the ALJ's determination that that United Agri Products-Pueblo and its insurance carrier should be liable for the medical treatment associated with that injury is affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated April 26, 2004, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2004.

BOARD MEMBER

c: Kerry E. McQueen, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent and its Insurance Carrier (K. L. Johnson Trucking/Continental)
D. Steven Marsh/Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier (United Agri Products/Old Republic)
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[4] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[5] *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P. 2d 697 (1973).